

Estate of Ownesby, Jr. vs. City of Cincinnati, et al.  
December 22, 2003

THOMAS HENRY STREICHER, JR.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, :  
vs. : Case No. 01-CV-769  
 : (Judge S. A. Spiegel)  
CITY OF CINCINNATI, :  
et al., :  
 :  
Defendants. :  
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Videotaped deposition of THOMAS HENRY

STREICHER JR., a witness herein, called by the  
plaintiffs for cross-examination, pursuant to the  
Federal Rules of Civil Procedure, taken before me,  
Wendy Davies Welsh, a Registered Diplomat Reporter  
and Notary Public in and for the State of Ohio, at  
the offices of Helmer, Martins & Morgan Co. LPA,  
1900 Fourth & Walnut Centre, 105 East Fourth Street,  
Cincinnati, Ohio, on Monday, December 22, 2003, at  
9:06 a.m.

Estate of Ownesby, Jr. vs. City of Cincinnati, et al.  
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THOMAS HENRY STREICHER, JR.

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| <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Frederick M. Morgan Jr., Esq.<br/>4 Paul B. Martins, Esq.<br/>5 Don Stiens, Esq.<br/>6 Helmer, Martins &amp; Morgan Co. LPA<br/>7 Suite 1900, Fourth &amp; Walnut Centre<br/>8 105 East Fourth Street<br/>9 Cincinnati, Ohio 45202<br/>10 Phone: (513) 421-2400</p> <p>11 John J. Helbling, Esq.<br/>12 The Helbling Law Firm, L.L.C.<br/>13 3672 Springdale Road<br/>14 Cincinnati, Ohio 45251<br/>15 Phone: (513) 923-9740</p> <p>16 Mark T. Tillar, Esq.<br/>17 224 Clark Road<br/>18 Cincinnati, Ohio 45215</p> <p>19 On behalf of the Defendants City of Golf Manor,<br/>20 Stephen Tilley, Roby Heiland and Chris<br/>21 Campbell:</p> <p>22 Wilson G. Weisenfelder Jr., Esq.<br/>23 Rendigs, Fry, Kiely &amp; Dennis<br/>24 900 Fourth &amp; Vine Tower<br/>One West Fourth Street<br/>Cincinnati, Ohio 45202-3688<br/>Phone: (513) 381-9200</p>  | <p>Page 2</p> <p>1 S T I P U L A T I O N S</p> <p>2 It is stipulated by and among counsel for the</p> <p>3 respective parties that the deposition of THOMAS</p> <p>4 HENRY STREICHER JR., a witness herein, called by the</p> <p>5 plaintiffs for cross-examination, pursuant to the</p> <p>6 Federal Rules of Civil Procedure, may be taken at</p> <p>7 this time by the notary; that said deposition may be</p> <p>8 reduced to writing in stenotype by the notary, whose</p> <p>9 notes may then be transcribed out of the presence of</p> <p>10 the witness; and that proof of the official</p> <p>11 character and qualifications of the notary is</p> <p>12 expressly waived.</p> <p>13 - - -</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>   |
| <p>1 APPEARANCES (Continued)</p> <p>2 On behalf of Defendants City of Cincinnati,<br/>3 Darren Sellers, Jason Hodge:</p> <p>4 Geri Hernandez Geller, Esq.<br/>5 Assistant City Solicitor<br/>6 Department of Law<br/>7 Room 214, City Hall<br/>8 801 Plum Street<br/>9 Cincinnati, Ohio 45202<br/>10 Phone: (513) 352-3346</p> <p>11 Neil F. Freund, Esq.<br/>12 Freund, Freeze &amp; Arnold<br/>13 One Dayton Centre<br/>14 1 South Main Street, Suite<br/>15 1800 Dayton, Ohio 45402<br/>16 Phone: (937) 222-2424</p> <p>17 On behalf of the Defendants Robert B. Jorg,<br/>18 Patrick Caton, Jason Hodge, Victor Spellman and<br/>19 Darren Sellers:</p> <p>20 Donald E. Hardin, Esq.<br/>21 Hardin, Lefton, Lazarus &amp; Marks, LLC<br/>22 915 Cincinnati Club Building<br/>23 30 Garfield Place<br/>24 Cincinnati, Ohio 45202<br/>Phone: (513) 721-7300</p> <p>Also present:</p> <p>Richard W. Grubb, Videographer</p> <p>Lisa Damstrom, Law Clerk<br/>Helmer, Martins &amp; Morgan Co., L.P.A.</p> <p>Mr. Roger Owensby</p> <p>Mr. Shawn Owensby</p> | <p>Page 3</p> <p>1 I N D E X</p> <p>2 Examination by: Page</p> <p>3 Mr. Morgan . . . . . 6, 354</p> <p>4 Mr. Weisenfelder . . . . . 334, 356</p> <p>5 - - -</p> <p>6 E X H I B I T S</p> <p>7 Plaintiff Exhibit 117 . . . . . 156</p> <p>8 Plaintiff Exhibit 118 . . . . . 169</p> <p>9 Plaintiff Exhibit 119 . . . . . 176</p> <p>10 Plaintiff Exhibit 120 . . . . . 176</p> <p>11 Plaintiff Exhibit 121 . . . . . 187</p> <p>12 Plaintiff Exhibit 122 . . . . . 226</p> <p>13 Plaintiff Exhibit 123 . . . . . 252</p> <p>14 Plaintiff Exhibit 124 . . . . . 256</p> <p>15 Plaintiff Exhibit 125 . . . . . 258</p> <p>16 Plaintiff Exhibit 126 . . . . . 262</p> <p>17 Plaintiff Exhibit 127 . . . . . 264</p> <p>18 Plaintiff Exhibit 128 . . . . . 268</p> <p>19 Plaintiff Exhibit 129 . . . . . 279</p> <p>20 Plaintiff Exhibit 130 . . . . . 291</p> <p>21 Plaintiff Exhibit 131 . . . . . 309</p> <p>22 - - -</p> <p>23</p> <p>24</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 litigation?</p> <p>2 A. Oh, yes.</p> <p>3 Q. Bringing us here today?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Did you or, to your knowledge, did anyone</p> <p>6 else in a managerial position in the department</p> <p>7 issue instructions that any documents that pertain</p> <p>8 to that investigation be maintained because there</p> <p>9 was a civil lawsuit pending?</p> <p>10 A. I don't know specifically that I did. I</p> <p>11 may have or someone may have. I'm sure -- when the</p> <p>12 notification comes out of -- of pending litigation</p> <p>13 or that litigation is filed, that generally is the</p> <p>14 practice -- that is the practice that we do that.</p> <p>15 Q. Okay. Is it a practice of yours to</p> <p>16 communicate with the -- with the line, with the rank</p> <p>17 and file through e-mail?</p> <p>18 A. Sometimes. Sometimes I do.</p> <p>19 Q. Does -- does --</p> <p>20 A. Actually -- well, okay.</p> <p>21 Q. Go ahead.</p> <p>22 A. I -- I don't usually e-mail very much any</p> <p>23 more at all. Because I sent a message as a joke one</p> <p>24 time and it was twisted very much so and used in</p> | <p style="text-align: right;">Page 128</p> <p>1 division?</p> <p>2 A. Had to do with a Golf trip that I was on</p> <p>3 with other police officers, and it has been twisted</p> <p>4 and presented as though it occur-- it deals with</p> <p>5 something inside the police department.</p> <p>6 Q. Okay.</p> <p>7 A. Misrepresented tremendously.</p> <p>8 Q. And to whom was it addressed?</p> <p>9 A. Jeff Butler.</p> <p>10 Q. Okay. I'm going to hand you what's</p> <p>11 previously been marked as Exhibit 60.</p> <p>12 A. Okay.</p> <p>13 Q. We'll --</p> <p>14 Do you recognize this as a version of the</p> <p>15 Cincinnati Police Department use of force policy?</p> <p>16 A. Yes, sir.</p> <p>17 Q. You see at the bottom it says revised</p> <p>18 7/00, replaces 5/00?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Is it -- in -- in your experience is it</p> <p>21 common that the use of force policy would be revised</p> <p>22 that often? That is, I mean, this is a two-month</p> <p>23 span here. Did that happen pretty regularly or --</p> <p>24 A. It can. Depends on whether or not</p>  |
| <p style="text-align: right;">Page 127</p> <p>1 litigation against me.</p> <p>2 And so I -- it's a rarity for me to</p> <p>3 discuss anything on e-mail because of -- because</p> <p>4 what I think was a very unfair and inappropriate use</p> <p>5 of a message I sent one time. And I accept</p> <p>6 responsibility for it. It was part of a joke and</p> <p>7 wound up to be something very distasteful.</p> <p>8 Q. Okay. The e-mail was or the --</p> <p>9 A. No, the use of it was.</p> <p>10 Q. What was the subject of it?</p> <p>11 A. Very inappropriate. Pardon me?</p> <p>12 Q. What was the subject of --</p> <p>13 MR. FREUND: I object.</p> <p>14 Q. -- that e-mail?</p> <p>15 MR. FREUND: Let me just consult with my</p> <p>16 client.</p> <p>17 MR. MORGAN: Okay.</p> <p>18 MR. FREUND: We can -- we can -- yeah.</p> <p>19 (Discussion off the record.)</p> <p>20 Q. I think there was a pending question, but</p> <p>21 I'm not sure what it was. I'll just ask you this.</p> <p>22 Did the e-mail that -- in question -- have anything</p> <p>23 to do with the police division or was it -- did it</p> <p>24 have to do with things outside of the police</p>                 | <p style="text-align: right;">Page 129</p> <p>1 something -- something is going to be added or</p> <p>2 deleted or whether or not there was some type of</p> <p>3 court decision that affects --</p> <p>4 Q. Okay.</p> <p>5 A. -- the policy and procedure.</p> <p>6 Q. Would -- would you have any reason, as you</p> <p>7 sit here, to believe that the July '00 version of</p> <p>8 the policy was not in effect in November '00?</p> <p>9 A. I -- I don't know whether it was --</p> <p>10 Q. I understand.</p> <p>11 A. -- or it wasn't. It -- I -- I don't</p> <p>12 recall any massive change to it --</p> <p>13 Q. Okay.</p> <p>14 A. -- back then.</p> <p>15 Q. If you'd turn to the second page, which</p> <p>16 for some reason is numbered 3. Do you see the bold</p> <p>17 word Procedure?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Right above that, would you read allowed</p> <p>20 the paragraph beginning with, "Following"?</p> <p>21 A. Yes, sir. "Following any use of force</p> <p>22 resulting in a citizen's injury, officers will</p> <p>23 ensure appropriate first aid is rendered immediately</p> <p>24 once the incident scene is stabilized."</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 MR. WEISENFELDER: Rick, just for the<br/>2 record, the copy of the exhibit that I have has<br/>3 a page 2. The second -- my second page is not<br/>4 page 3.<br/>5 MR. MORGAN: Let's see. I just don't<br/>6 have -- don't have page 1 is why. So I'm not<br/>7 -- what I'm going to do, I'll cover this right<br/>8 now and I will provide the Chief with a<br/>9 complete exhibit.<br/>10 MR. WEISENFELDER: Just wanted to let you<br/>11 know.<br/>12 MR. MORGAN: I appreciate that, Wil,<br/>13 thanks.<br/>14 MR. WEISENFELDER: Yeah.<br/>15 BY MR. MORGAN:<br/>16 Q. Would you agree that the events<br/>17 surrounding the Owensby homicide constituted a use<br/>18 of force resulting a citizen's injury?<br/>19 A. Yes.<br/>20 Q. I -- I'd like to focus on the words "once<br/>21 the incident scene is stabilized" in this sent-- in<br/>22 this paragraph, in this sentence. What do those<br/>23 words mean to you?<br/>24 A. It depends on the situation that you're</p>  | <p style="text-align: right;">Page 132</p> <p>1 what was the spectrum?<br/>2 A. Every-- everywhere from the incident scene<br/>3 itself was stabilized enough to be able to provide<br/>4 medical care or request medical care for Mr.<br/>5 Owensby, up to a point where it was not stabilized<br/>6 at all. In fact, there was still a lot of work to<br/>7 be done because of witnesses being gathered. Was<br/>8 there evidence still on the scene? Who all was<br/>9 here? Who's in charge?<br/>10 Q. Well, could --<br/>11 A. What supervisor?<br/>12 Q. Could "stabilize" extend to interviewing<br/>13 witnesses?<br/>14 A. Sure. It could.<br/>15 Q. Uh --<br/>16 A. It could.<br/>17 Q. So a -- the -- the chief of police, an<br/>18 assistant chief of police and the staff of the<br/>19 internal investigations decision were unable to<br/>20 agree on the meaning of the policy statement that<br/>21 medical care must be rendered immediately once the<br/>22 incident scene is stabilized, correct?<br/>23 MR. FREUND: Objection.<br/>24 A. No.</p> |
| <p style="text-align: right;">Page 131</p> <p>1 looking at.<br/>2 Q. Okay.<br/>3 A. "Stabilized" can be a use of force<br/>4 situation and all the people that are involved in it<br/>5 brought under the control of someone who's now<br/>6 charged with a responsibility of maintaining that<br/>7 scene. It -- it can be a disaster scene, an area<br/>8 stabilized. It can -- there's just a lot of<br/>9 different connotations to it.<br/>10 Q. In your conversations with Colonel Biehl,<br/>11 Mr. Carter, and the others, did you discuss whether<br/>12 the incident scene there at Sam's Carry Out had been<br/>13 stabilized within the meaning of this policy at any<br/>14 point in time?<br/>15 A. Yes.<br/>16 Q. And what --<br/>17 A. Yes.<br/>18 Q. -- did you conclude?<br/>19 A. Much -- much disagreement over that issue,<br/>20 because of -- of exactly what does "stabilized"<br/>21 mean? And a lot of different perceptions from<br/>22 people that were there, a lot of different<br/>23 discussion about it.<br/>24 Q. What were the -- what was the span of --</p> | <p style="text-align: right;">Page 133</p> <p>1 THE WITNESS: I'm sorry?<br/>2 MR. FREUND: You've got to take your time.<br/>3 THE WITNESS: I'm sorry.<br/>4 MR. FREUND: He answered over -- before I<br/>5 objected.<br/>6 So go ahead.<br/>7 A. No. No, that's not --<br/>8 Q. You did agree?<br/>9 A. Pardon me?<br/>10 Q. You did agree?<br/>11 A. We came --<br/>12 Q. You all agreed?<br/>13 A. -- to a conclusion.<br/>14 Q. And what was your conclusion?<br/>15 A. Came to a conclusion that the care and<br/>16 concern for an individual who was in need of<br/>17 advanced medical care overrides the need to consider<br/>18 all the other things that we discussed about whether<br/>19 or not a scene is stabilized.<br/>20 Q. Okay. And in order to reach that<br/>21 conclusion you had to debate it?<br/>22 A. No. No, not to debate it. Just -- just<br/>23 to discuss the fact that there were differences --<br/>24 differences of opinions and different explanations</p>   |

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| <p style="text-align: right;">Page 134</p> <p>1 that had been brought forward. And we were all of<br/>2 the same opinion.<br/>3 Q. Okay. So --<br/>4 A. I think, what we were -- in -- in this<br/>5 discussion where this occurred, my recollection, my<br/>6 best recollection is that these different opinions<br/>7 or these different ideas had been brought to the<br/>8 surface during questioning of various people.<br/>9 Q. So the Internal Investigations team had --<br/>10 had -- were -- were bubbling up what they had<br/>11 learned from talking to the officers who had been at<br/>12 the scene?<br/>13 A. Right.<br/>14 Q. So the officers who'd -- who had been at<br/>15 the scene had a variety of opinions or<br/>16 understandings of the policy regarding what a<br/>17 stabilized incident scene consisted of?<br/>18 A. I don't know that they do or don't have<br/>19 different opinions of it. I believe that those<br/>20 different things were discussed and brought up.<br/>21 Q. Okay. What training is provided, what<br/>22 guidance is provided in -- in training at the<br/>23 academy or in-service regarding, for purposes of<br/>24 this policy, when an incident scene is stabilized?</p> | <p style="text-align: right;">Page 136</p> <p>1 medical attention, that takes precedence over other<br/>2 concerns?<br/>3 A. I don't know specifically where it is, but<br/>4 I know it's there.<br/>5 Q. You know it's in writing?<br/>6 A. Uh-huh. Because I've seen it in writing<br/>7 in the past. Now, I -- and I may be -- I may be<br/>8 remembering -- it's probably one of the dangers of<br/>9 having been here for 33 years, but I may be<br/>10 remembering back when, all the way back to when our<br/>11 police department had primary responsibility for<br/>12 responding to medical emergencies.<br/>13 At some point -- I don't even remember,<br/>14 it's been a long time, but at some point that<br/>15 responsibility shifted over to the fire department,<br/>16 and -- and our role changed dramatically. And I may<br/>17 be remembering all the way back to that, because I<br/>18 ran a scout car, which was basically our version of<br/>19 an ambulance. And that was very definitive and<br/>20 structured at that time.<br/>21 Q. Okay.<br/>22 A. And I've always carried that with me.<br/>23 Q. Okay. Do you -- do you know one way or<br/>24 the other whether the policies and procedures, the</p> |
| <p style="text-align: right;">Page 135</p> <p>1 A. The same as I've said in the other ones.<br/>2 In-service train-- or I'm sorry, it starts with<br/>3 recruit training, reemphasized during in-service<br/>4 training, during roll call training, and during<br/>5 specific instruction between supervisor and<br/>6 subordinate, and also amongst colleagues.<br/>7 Q. But what is the guidance?<br/>8 A. That --<br/>9 Q. What -- what --<br/>10 A. -- medical care -- medical care takes<br/>11 precedent over all other issues.<br/>12 Q. And that's -- has that always been the<br/>13 policy?<br/>14 A. Since I've been here.<br/>15 Q. Why is that --<br/>16 A. That's how I was instructed when I came on<br/>17 and I still believe that.<br/>18 Q. Why is that not in the written policy?<br/>19 A. In this policy itself?<br/>20 Q. Yes, sir.<br/>21 A. Because this is about use of force.<br/>22 Q. Are you aware of any policy, printed<br/>23 policy, of the Cincinnati Police Division which<br/>24 states that where there is a need for serious</p>   | <p style="text-align: right;">Page 137</p> <p>1 written policies and procedures, that were in effect<br/>2 in November of 2000 included a printed statement<br/>3 that serious medical need took precedence over other<br/>4 considerations?<br/>5 A. I don't -- I don't know. I don't know<br/>6 where that is in writing.<br/>7 Q. Okay.<br/>8 A. Just off the top of my head, I don't know.<br/>9 Q. But you think it's there somewhere?<br/>10 A. Uh-huh.<br/>11 Q. Okay. Why is it appropriate or necessary<br/>12 to have any discussion of medical needs in a use of<br/>13 force policy?<br/>14 A. Because when force is used there is a<br/>15 possibility, in fact, a probability in some<br/>16 situations, where a person may be injured during<br/>17 that use of force. And that once the use of force<br/>18 situation or the need for using force is over with,<br/>19 then the people that are in custody, the person that<br/>20 is in custody of an officer, that officer has a duty<br/>21 to care for that person and to provide medical<br/>22 assistance as best they can if a person is in need.<br/>23 Q. Do you perceive any tension or<br/>24 discontinuity between the statement that an officer</p>       |

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| <p style="text-align: right;">Page 138</p> <p>1 will ensure first aid, quote, "once the incident<br/>2 scene is stabilized," unquote, and a policy that a<br/>3 serious medical need takes precedence over other<br/>4 considerations?<br/>5 A. Do I see a --<br/>6 Q. Do you see any disconnect there?<br/>7 A. No, not at all.<br/>8 Q. Okay.<br/>9 A. No.<br/>10 Q. Would this statement be more accurate,<br/>11 more complete rather, if it included, that is on<br/>12 page 3 of Exhibit 60, if it included the statement<br/>13 that a serious medical need takes precedence over<br/>14 scene stabilization?<br/>15 MR. FREUND: Objection.<br/>16 Go ahead and answer.<br/>17 A. No.<br/>18 Q. Why not?<br/>19 A. Because I don't.<br/>20 Q. You don't think that would be a more<br/>21 complete iteration of the department's policy?<br/>22 A. No, I don't.<br/>23 Q. Do you think that a line officer could be<br/>24 led to believe by this language in the use of force</p>   | <p style="text-align: right;">Page 140</p> <p>1 lawyers. And that's -- that's where the cops start<br/>2 spitting out those different things. That's where<br/>3 everybody that's involved starts spitting it --<br/>4 spitting it out, because they're all --<br/>5 MR. FREUND: Let's try to stay focused on<br/>6 questions that are asked.<br/>7 THE WITNESS: Okay. I'm trying to provide<br/>8 that.<br/>9 MR. FREUND: I know you are.<br/>10 A. I mean, I feel that you're going<br/>11 someplace, and I'm trying to tell you we know what<br/>12 this means. We know exactly what it means. I know<br/>13 what it means. But as I've said to you before in<br/>14 the other situation, if things get twisted, it gets<br/>15 twisted. That's what causes all of this.<br/>16 Q. So your perception is that the line<br/>17 officers knew full well what the policy meant, but<br/>18 gave statements to the Internal Investigations<br/>19 and -- team indicating that maybe it meant something<br/>20 different?<br/>21 MR. FREUND: Objection. That's --<br/>22 A. No.<br/>23 Q. Well, where was the debate on whether or<br/>24 not scene stabilization took precedence over an</p> |
| <p style="text-align: right;">Page 139</p> <p>1 policy that her only responsibility with respect to<br/>2 providing medical care would be to provide it after<br/>3 the scene was stabilized?<br/>4 MR. FREUND: Objection.<br/>5 Go ahead.<br/>6 A. No.<br/>7 Q. Why not?<br/>8 A. Because officers know what that means.<br/>9 And "stabilize" very simply means once the need for<br/>10 using force is over with, your duty immediately<br/>11 changes to one of providing care for a person --<br/>12 Q. How do they --<br/>13 A. -- immediately.<br/>14 Q. How do they know?<br/>15 A. It immediately changes.<br/>16 Q. How do they know that?<br/>17 A. That's what we're taught. That's what<br/>18 we're taught. And I -- the other stuff that comes<br/>19 up, I hope you don't take this personally, but it's<br/>20 as a result of situations like this, people<br/>21 immediately start thinking right away about down the<br/>22 road. So all these different theories come out.<br/>23 And I would offer to you, and I hope none<br/>24 of you take offense to this, but it comes from</p> | <p style="text-align: right;">Page 141</p> <p>1 urgent medical need? Who -- who --<br/>2 A. There's not --<br/>3 Q. -- questioned?<br/>4 A. There's not a debate over it.<br/>5 Q. Okay.<br/>6 A. I'm just saying -- said to you, all of<br/>7 this -- all of these things were brought forward,<br/>8 all of these things were brought forward in<br/>9 anticipation of a discussion just like what you and<br/>10 I are having right here. And I'm here to tell you<br/>11 "stabilize" means when use of force is finished, if<br/>12 a person needs care, I give that person care.<br/>13 Q. Use of force is finished in Mr. Owensby's<br/>14 case when he's handcuffed, correct?<br/>15 MR. FREUND: Objection.<br/>16 You can answer.<br/>17 A. Not necessarily.<br/>18 Q. When -- when was use of force finished in<br/>19 Mr. Owensby's case?<br/>20 MR. FREUND: Objection.<br/>21 If you know, you can answer.<br/>22 Q. That is, appropriate use of force?<br/>23 A. I don't know that exactly.<br/>24 Q. When was there an obligation on the part</p>  |

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| <p style="text-align: right;">Page 142</p> <p>1 of the police officers on the scene to provide him<br/>2 with medical care?<br/>3 MR. FREUND: Objection.<br/>4 You can answer if you know.<br/>5 A. When the situation was stabilized and the<br/>6 officers were able to do so.<br/>7 Q. When was that?<br/>8 A. When they --<br/>9 MR. FREUND: Objection.<br/>10 Go ahead.<br/>11 THE WITNESS: I'm sorry.<br/>12 MR. FREUND: Go ahead.<br/>13 A. When they realized that he needed it.<br/>14 Q. So they had no obligation to provide him<br/>15 medical care until they realized that he needed<br/>16 medical care?<br/>17 A. Sure. Exactly.<br/>18 Q. They didn't realize that for a number of<br/>19 minutes after he was placed in the back of the Golf<br/>20 Manor car, correct?<br/>21 MR. FREUND: Objection.<br/>22 Go ahead and answer.<br/>23 Q. As far as you know?<br/>24 A. I don't know.</p>  | <p style="text-align: right;">Page 144</p> <p>1 the Cincinnati Police Division policies?<br/>2 A. As described by the officers, no, it was<br/>3 not.<br/>4 Q. As described by the officers and as<br/>5 sustained by you personally, correct?<br/>6 A. Exactly.<br/>7 Q. So do you have any -- strike that.<br/>8 When you are reviewing a report, for<br/>9 example, an OMI report or an I -- II -- IIS report,<br/>10 you know, to -- to initial off on it or in -- in the<br/>11 case of a termination, to take the action, what<br/>12 standard do you apply to whether something is or is<br/>13 not sustained? Is it reasonable doubt, is it<br/>14 preponderance?<br/>15 A. Preponderance.<br/>16 Q. Okay. So you agree then that the<br/>17 preponderance of the evidence is that officer --<br/>18 then Officer Caton, in fact, did strike Mr. Owensby<br/>19 several times as he lay handcuffed in the parking<br/>20 lot, correct?<br/>21 MR. HARDIN: Objection.<br/>22 MR. FREUND: I object to that.<br/>23 Go ahead and answer.<br/>24 A. Based on what the officers said, yes.</p> |
| <p style="text-align: right;">Page 143</p> <p>1 Q. You don't know --<br/>2 A. I don't know that. The -- I can't answer<br/>3 for when a person knows something or doesn't know<br/>4 something.<br/>5 Q. So you don't know when the Cincinnati<br/>6 police officers on the scene concluded that Mr.<br/>7 Owensby needed medical care?<br/>8 A. There's a variety of different times,<br/>9 depending on which officer you're talking about.<br/>10 Q. Okay. While we're on the subject of the<br/>11 use of force policies, are you aware of the finding<br/>12 that Officer, then Officer Caton had -- had used his<br/>13 fist to -- to punch Mr. Owensby in the back while he<br/>14 was on the ground handcuffed?<br/>15 MR. HARDIN: Objection to the form of the<br/>16 question.<br/>17 Q. Do you remember that?<br/>18 MR. FREUND: You can answer.<br/>19 A. That was reported by two officers, as I<br/>20 recall.<br/>21 Q. And did you ultimately conclude that that<br/>22 allegation was sustained, you personally?<br/>23 A. Yes, I did.<br/>24 Q. Was that an appropriate use of force under</p> | <p style="text-align: right;">Page 145</p> <p>1 Q. Well, you -- you found that that was the<br/>2 preponderance of the evidence, correct?<br/>3 A. That's right.<br/>4 Q. You personally? Was the scene stabilized<br/>5 as Mr. Owensby lay in the parking lot and was<br/>6 pummeled by Officer Caton?<br/>7 MR. HARDIN: Objection.<br/>8 MR. FREUND: Objection.<br/>9 You can answer if you know.<br/>10 A. I don't know.<br/>11 Q. Okay. Was the scene stabilized -- strike<br/>12 that.<br/>13 Have you had the opportunity to review the<br/>14 cruiser cam video out from the rolling unit that<br/>15 arrived at the scene after Mr. Caton was in -- after<br/>16 Mr. Owensby was in the back of the car?<br/>17 A. I don't know that I've looked at every one<br/>18 of them, but some of them I have, yes.<br/>19 Q. Okay. At least one you've seen?<br/>20 A. Yes.<br/>21 Q. Did you -- have -- have you seen it --<br/>22 strike that.<br/>23 When you looked at it, did you look at it<br/>24 back and forth? I mean, did you look at it to</p>                                       |

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| <p style="text-align: right;">Page 346</p> <p>1 relinquished to the Cincinnati -- first Cincinnati<br/>2 officer on the scene, is that --<br/>3 MR. HARDIN: Objection.<br/>4 MR. MORGAN: Object to the form.<br/>5 A. I'm -- I'm not with you.<br/>6 Q. Okay.<br/>7 A. You're losing me here.<br/>8 Q. Well, okay. Well, let's back up.<br/>9 MR. FREUND: Isn't -- isn't that a -- a<br/>10 legal question?<br/>11 MR. WEISENFELDER: Well, it's a policy.<br/>12 And whether or not they followed the policy<br/>13 involves --<br/>14 MR. FREUND: I'll let you ask it, but I<br/>15 think it's a --<br/>16 MR. WEISENFELDER: Well, it may be.<br/>17 MR. HARDIN: It's legal --<br/>18 MR. WEISENFELDER: Well --<br/>19 MR. HARDIN: -- and I'll be objecting.<br/>20 MR. MORGAN: How come you're so much nicer<br/>21 to him than you were to me?<br/>22 MR. FREUND: Because --<br/>23 MS. GEILER: Don't answer that, Neil.<br/>24 MR. FREUND: Because I want to be.</p>                                  | <p style="text-align: right;">Page 348</p> <p>1 effect as of November 7th, 2000?<br/>2 A. I don't see this dated anywhere, but I<br/>3 guess we can assume that it was.<br/>4 Q. Well, I don't want anybody to assume<br/>5 anything.<br/>6 A. Okay.<br/>7 Q. There's a date on the transmittal page to<br/>8 you from Sergeant Jeffrey Butler dated October 30th<br/>9 of 2000.<br/>10 A. Okay.<br/>11 Q. Okay. And that transmittal memo lists the<br/>12 participating agencies within Hamilton County,<br/>13 correct?<br/>14 A. Correct.<br/>15 MR. MORGAN: Object to the form.<br/>16 Q. Okay. And Cincinnati is -- well, is<br/>17 Cincinnati part of that agreement?<br/>18 A. Yes.<br/>19 Q. Okay. As is Golf Manor?<br/>20 A. Yes.<br/>21 Q. Okay. Well, let's go back to page 2 then.<br/>22 A. Okay.<br/>23 Q. All right. "Control of any arrested<br/>24 person, evidence and the crime scene shall be</p>   |
| <p style="text-align: right;">Page 347</p> <p>1 MR. HARDIN: I'll -- I'll object to the<br/>2 reference that this is a policy.<br/>3 MR. FREUND: Yeah. I -- I just think that<br/>4 you're asking him a -- a legal question.<br/>5 MR. WEISENFELDER: Well, if he's --<br/>6 MR. FREUND: And -- and not a factual<br/>7 question.<br/>8 MR. WEISENFELDER: That's fine. Okay.<br/>9 MR. FREUND: So that's the basis for my --<br/>10 MR. WEISENFELDER: All right. Well, let<br/>11 me --<br/>12 MR. FREUND: -- objection.<br/>13 MR. WEISENFELDER: Let me go back and<br/>14 make --<br/>15 MR. FREUND: And I -- and -- and that's<br/>16 the last time I'm going to be nice to you also.<br/>17 MR. WEISENFELDER: Okay. That's fair<br/>18 enough.<br/>19 MR. FREUND: All right.<br/>20 MR. WEISENFELDER: All right.<br/>21 BY MR. WEISENFELDER<br/>22 Q. Chief Streicher, what was marked as<br/>23 Exhibit 78, the Mutual Aid Agreement For Law<br/>24 Enforcement, that was an agreement that was in</p> | <p style="text-align: right;">Page 349</p> <p>1 relinquished to the first available officer from the<br/>2 jurisdiction within which the crime took place."<br/>3 What's your understanding of that sentence?<br/>4 A. That if an officer --<br/>5 MR. MORGAN: Asked and answered.<br/>6 THE WITNESS: I'm sorry.<br/>7 MR. FREUND: Go ahead.<br/>8 A. If an officer is on duty and has probable<br/>9 cause to believe that a criminal offense occurred<br/>10 outside of their own jurisdiction but in the<br/>11 jurisdiction of one of these cooperating agencies,<br/>12 that officer can make an arrest --<br/>13 Q. And --<br/>14 A. -- for that situation and do whatever's<br/>15 necessary according -- according to the law.<br/>16 Q. And what --<br/>17 A. And then when a --<br/>18 Q. Wait --<br/>19 A. -- respondent --<br/>20 Q. I'm --<br/>21 A. -- if -- if -- if the -- if the -- when an<br/>22 officer from the jurisdiction where that offense<br/>23 occurred arrived there, that that person should<br/>24 relinquish custody and control of that person to the</p> |

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| <p style="text-align: right;">Page 350</p> <p>1 officer in the jurisdiction where it occurred.<br/>2 Q. Whose own -- whose jurisdiction where the<br/>3 offense occurred, correct?<br/>4 A. Right. Exactly.<br/>5 Q. Okay. Let's turn to page 7.<br/>6 A. Okay.<br/>7 Q. Paragraph VI C. Do you want to take a<br/>8 minute to read it?<br/>9 A. C? Sure.<br/>10 Q. Pardon me. No. I'm sorry, VI D.<br/>11 A. What is it?<br/>12 Q. VI D on the bottom of page 7.<br/>13 A. Oh, okay. D, okay.<br/>14 Q. Okay. Have you had an opportunity to read<br/>15 that?<br/>16 A. Yes, sir.<br/>17 Q. For the record, VI D of the -- what was<br/>18 marked as Exhibit 78 states, "Whenever the law<br/>19 enforcement employees of one cooperating Agency are<br/>20 providing police services upon request to another<br/>21 cooperating Agency they will be under the lawful<br/>22 direction and authority of the commanding law<br/>23 enforcement officer of the Agency to which they are<br/>24 rendering assistance."</p>  | <p style="text-align: right;">Page 352</p> <p>1 Q. And why not?<br/>2 A. Because I don't know that any supervisor<br/>3 from -- or any commanding officer from Cincinnati<br/>4 gave them any direction.<br/>5 Q. But it does-- it doesn't say they have to,<br/>6 does it?<br/>7 MR. HARDIN: Object.<br/>8 Q. Doesn't it say they shall be?<br/>9 MR. HARDIN: Objection. Argumentative.<br/>10 MR. MORGAN: Join.<br/>11 A. "They will be under the lawful direction<br/>12 and authority." I don't know that any direction was<br/>13 given to them.<br/>14 Q. Okay. So you're not aware of any<br/>15 Cincinnati officer, in fact, directing them or<br/>16 asking them to do anything as it relates to Mr.<br/>17 Owensby?<br/>18 A. I don't recall anything at all --<br/>19 Q. Okay.<br/>20 A. -- about -- along that.<br/>21 Q. Are you aware of anyone from Cincinnati --<br/>22 when I say Cincinnati, I mean the Cincinnati Police<br/>23 Department.<br/>24 A. Okay.</p>  |
| <p style="text-align: right;">Page 351</p> <p>1 Chief, would you agree with me that in<br/>2 this instance, the Owensby matter, that when the<br/>3 Golf Manor officers responded to the Cincinnati<br/>4 jurisdiction they were under the control or<br/>5 direction of the Cincinnati officers?<br/>6 MR. HARDIN: Objection.<br/>7 MR. MORGAN: Foundation, conclusion of<br/>8 law, speculation.<br/>9 A. Umm --<br/>10 Q. Based upon this agreement.<br/>11 MR. MORGAN: Same objections.<br/>12 A. I guess I have to ask you in what matters?<br/>13 I mean, I don't understand what you mean by --<br/>14 Q. Well, I -- I -- I didn't write the<br/>15 agreement. I'm asking based upon what you know of<br/>16 the incident involving Mr. Owensby, knowing how the<br/>17 Golf off-- Golf Manor officers responded to the<br/>18 scene as well as what's contained in paragraph VI D,<br/>19 whether, in your opinion, the Golf Manor -- Golf<br/>20 Manor officers were under the control or direction<br/>21 of Cincinnati?<br/>22 MR. HARDIN: Objection.<br/>23 MR. MORGAN: Same objections.<br/>24 A. No.</p> | <p style="text-align: right;">Page 353</p> <p>1 Q. Asking either of the Golf Manor officers<br/>2 to do something that was not done?<br/>3 MR. MORGAN: Foundation.<br/>4 A. I don't recall that --<br/>5 Q. Okay.<br/>6 A. -- no, sir.<br/>7 Q. You're not aware of anything?<br/>8 A. I -- I --<br/>9 Q. Correct?<br/>10 A. -- simply don't recall.<br/>11 Q. Okay. Are you aware of any of the<br/>12 Cincinnati officers requesting either Golf Manor<br/>13 officer to summon or request the fire department or<br/>14 any other type of medical assistance for Mr.<br/>15 Owensby?<br/>16 MR. MORGAN: Foundation.<br/>17 A. I don't recall that.<br/>18 Q. Okay. Chief Streicher, would you agree<br/>19 that the officers who participated in subduing<br/>20 the -- or the physical arrest of Mr. Owensby or the<br/>21 Macing of Mr. Owensby or placing Mr. Owensby in the<br/>22 back of a Golf Manor police cruiser were in a better<br/>23 position than the Golf Manor officers to assess Mr.<br/>24 Owensby's physical condition or need for medical</p> |

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| <p style="text-align: right;">Page 354</p> <p>1 care?</p> <p>2 MR. FREUND: Objection.</p> <p>3 MR. HARDIN: Objection.</p> <p>4 MR. MORGAN: Foundation, speculation.</p> <p>5 A. I don't know that that's accurate.</p> <p>6 Q. Okay.</p> <p>7 A. I -- I -- wouldn't -- certainly wouldn't</p> <p>8 agree that that's accurate.</p> <p>9 Q. The fact of the matter is, as you sit here</p> <p>10 today, you're not certain or don't have specific</p> <p>11 facts as to what either of the Golf Manor officers</p> <p>12 saw or ability to see as it related to Mr. Owensby's</p> <p>13 condition; is that true?</p> <p>14 A. That's correct.</p> <p>15 MR. MORGAN: Leading.</p> <p>16 Q. Okay.</p> <p>17 MR. WEISENFELDER: I have nothing further.</p> <p>18 MR. FREUND: Are you -- are you going to</p> <p>19 have any further questions?</p> <p>20 MR. MORGAN: I may have one. I need to</p> <p>21 parse this just a second. Yeah, I think one.</p> <p>22 FURTHER CROSS-EXAMINATION</p> <p>23 BY MR. MORGAN:</p> <p>24 Q. Chief, when -- talking about paragraph D</p>  | <p style="text-align: right;">Page 356</p> <p>1 that -- that tries to allow some flexibility because</p> <p>2 of the large number of incidents that can occur</p> <p>3 where we cross jurisdictional lines.</p> <p>4 Q. Do me a favor, Chief. Read aloud the last</p> <p>5 two lines of paragraph D which are actually on the</p> <p>6 next page. That sentence.</p> <p>7 A. "Officers shall be subject to the code of</p> <p>8 ethics, policies, and rules and regulations of their</p> <p>9 employing Agency at all times."</p> <p>10 MR. MORGAN: I have nothing further.</p> <p>11 Thank you, Chief.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. WEISENFELDER: Chief, I have one more.</p> <p>14 THE WITNESS: Okay.</p> <p>15 FURTHER CROSS-EXAMINATION</p> <p>16 BY MR. WEISENFELDER:</p> <p>17 Q. Do you know who drafted the --</p> <p>18 MR. WEISENFELDER: Well, I -- you know, I</p> <p>19 misspoke. I have more than one question. And</p> <p>20 Neil's going to get upset, aren't you, Neil?</p> <p>21 MR. FREUND: No. No. I don't -- I don't</p> <p>22 easily get upset.</p> <p>23 MR. WEISENFELDER: Good.</p> <p>24 BY MR. WEISENFELDER:</p> |
| <p style="text-align: right;">Page 355</p> <p>1 on page 7 of the compact, when you said -- it's my</p> <p>2 understanding that the reason you discounted</p> <p>3 reliance on this paragraph was because you weren't</p> <p>4 aware of there having been a request from the City</p> <p>5 to Golf Manor to come and provide assistance; is</p> <p>6 that right?</p> <p>7 A. Well, there was an all-- no, there's a --</p> <p>8 there's a --</p> <p>9 MR. HARDIN: There's going to be an</p> <p>10 objection on misstatement, but go ahead.</p> <p>11 A. There's a request. It's an all--</p> <p>12 all-county broadcast goes out --</p> <p>13 Q. Okay.</p> <p>14 A. -- for assistance for officers. That goes</p> <p>15 out. I read this as -- as if officers arrived there</p> <p>16 and they have to take action, say to arrest</p> <p>17 somebody, they could be acting with authority of</p> <p>18 our -- of our jurisdiction.</p> <p>19 The direction -- it -- it also provides</p> <p>20 our officers, our commanders with the ability, Golf</p> <p>21 Manor responds, Addyston responds, whoever, "Take a</p> <p>22 traffic post, I want you to do this, this and this,"</p> <p>23 while they're there under the conditions.</p> <p>24 It's a very broad, very broad statement</p> | <p style="text-align: right;">Page 357</p> <p>1 Q. Chief, do you know who drafted this</p> <p>2 document?</p> <p>3 MR. MORGAN: Asked and answered.</p> <p>4 A. No.</p> <p>5 Q. Okay.</p> <p>6 A. I don't know who specifically wrote that.</p> <p>7 Q. Did you have any role in drafting this --</p> <p>8 this document?</p> <p>9 A. No.</p> <p>10 Q. Okay. Prior to today though, you had seen</p> <p>11 it and you were familiar with it?</p> <p>12 A. Oh, yes, sir.</p> <p>13 Q. Okay. And you've had an opportunity to</p> <p>14 read, I think, probably at least three times</p> <p>15 paragraph VI D; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Would you agree that the reason for</p> <p>18 that paragraph is that when you have a number -- or</p> <p>19 potentially a number of other jurisdictions</p> <p>20 responding to another jurisdiction, that someone has</p> <p>21 to be in control? They all can't be in control?</p> <p>22 Someone has to assume control and responsibility for</p> <p>23 the officers that are responding to -- to direct</p> <p>24 whatever needs to be done, whether it be traffic,</p>              |

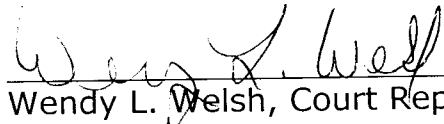
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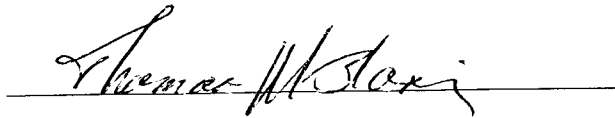
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STATE OF OHIO :  
: SS  
COUNTY OF HAMILTON :

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of THOMAS HENRY STREICHER, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.

  
Wendy L. Welsh, Court Reporter

Sworn to before me this 26<sup>th</sup> day of FEBRUARY, 2004.



Thomas M. Blasing  
Notary Public - State of Ohio

My commission expires:  
May 4, 2004.